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13 Attorneys for Plaintiff JENS ERIK SORENSEN,  
14 as Trustee of SORENSEN RESEARCH AND  
15 DEVELOPMENT TRUST

16 UNITED STATES DISTRICT COURT  
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
18

19 JENS ERIK SORENSEN, as Trustee of  
20 SORENSEN RESEARCH AND  
21 DEVELOPMENT TRUST,

22 Plaintiff

23 v.

24 LEXAR MEDIA, INC., a Delaware  
25 Corporation; and DOES 1 – 100,

26 Defendants.  
27  
28

and related counterclaims.

) Case No. 08 CV 00095 JW

)

) **REDACTED – PUBLIC VERSION**

)

) **SUPPLEMENTAL**

) **DECLARATION OF STEPHEN**

) **PETRIE, Ph.D. IN SUPPORT OF**

) **PLAINTIFF'S SUPPLEMENTAL**

) **BRIEFING IN SUPPORT OF**

) **MOTION FOR APPLICATION OF**

) **35 U.S.C. § 295 PRESUMPTION OF**

) **INFRINGEMENT**

)

)

)

)

)

1 I, Stephen Petrie, Ph.D., declare:

2 1. I am not a party to the present action. I am over the age of eighteen. I  
3 have personal knowledge of the facts contained within the following paragraphs, and  
4 could and would competently testify thereto if called as a witness in a court of law.

5 2. This Declaration supplements my Declaration in Support of Plaintiff's  
6 Motion for Application of 35 U.S.C. § 295 Presumption of Infringement dated May  
7 21, 2008 (Docket #31) (1<sup>st</sup> Declaration), and is being filed in conjunction with  
8 Plaintiff's Supplemental Briefing in support of that same motion.

9 3. I incorporate by reference my qualifications and work history in the  
10 field of plastic injection molding as set forth in my 1<sup>st</sup> Declaration.

11 4. As I testified previously, I have physically examined the Accused  
12 Products and determined that, the Accused Products in this case are substantially  
13 likely to include every element of Claim 1 of the '184 patented process to the extent  
14 that can be determined without access to the manufacturer's first-hand information.  
15 1<sup>st</sup> Declaration, ¶ 15.

16 5. The presence or absence of the elements of the '184 patent can be  
17 determined with a high degree of accuracy through physical and destructive  
18 examination of the Accused Product. All of those elements that can be determined  
19 from an assessment of the Accused Product are present. With regard to those few  
20 elements for which absolute determination is not possible without inspection of the  
21 mold tooling, the best evidence that can be gathered from examination of the  
22 Accused Products, and consideration of the commercially reasonable techniques that  
23 may be employed, shows that those elements were most reasonably present in the  
24 Accused Processes. 1<sup>st</sup> Declaration, ¶ 19.

25 6. Absolute confirmation of the existence of a common mold part requires  
26 access to the actual injection molds and manufacturing equipment. Most high quality  
27 injection molded products that are made of two or more different plastic materials,  
28 such as the Accused Products, are made in molds comprising a common mold part.

1 1<sup>st</sup> Declaration, ¶ 20.

2 7. Since the time of that declaration, I have not been given access to the  
3 manufacturer's first-hand information. Specifically, I have not been given access to  
4 personally inspect any mold tooling or manufacturing equipment represented as  
5 being used to manufacture the Accused Products during relevant times to this case.

6 8. I have, however, reviewed the following second- or third-hand  
7 information provided by Lexar in discovery:

8 a. Documents bates-numbered  
9 inclusive, (three-page narrative with nine photographs), a true  
10 and correct copy of which is attached hereto as,

11 b. Documents bates-numbered (photograph of a  
12 dual injection injection molding machine including a rotary platen); a true and  
13 correct copy of which is attached hereto as,

14 c. Documents bates-numbered (more distant  
15 photograph of a dual injection injection molding machine including a rotary platen);  
16 a true and correct copy of which is attached hereto as,

17 d. Documents bates-numbered (photograph of  
18 eight mold halves on a floor, all showing chamfered corners); a true and correct copy  
19 of which is attached hereto as,

20 e. Deposition transcript of Ton Nguyen ("*Nguyen depo*").

21  
22 8. I understand that Lexar acknowledges having at least  
23 , in the *Nguyen*  
24 *depo*.

25 9. I have not been advised of the original source (person or company) of  
26 item nos. a, b, c, or d, above, and therefore am unable to attribute my observations  
27 below to any particular supplier or evaluate the credibility of these unidentified  
28 sources.

1           10. However, the information supplied by Lexar identified herein is  
2 internally inconsistent from a technical point of view as described below.

3           11. The documents further support the “substantial likelihood of  
4 infringement” analysis provided my 1<sup>st</sup> Declaration. Specifically, the evidence  
5 produced in discovery leads directly to the conclusion that the Lexar accused  
6 processes include the use of one or more “common mold parts” for at least three  
7 different reasons discussed below.

8           12.               is Lexar’s “storyboarded” photograph series with captions  
9 asserting a purported non-infringing process, which states that  
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11  
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16           13. Lexar also produced a number of documents and photographs that are  
17 purported to demonstrate aspects of the manufacturing process. The photographs,  
18 and *Nguyen depo* produced by Lexar paint a very different picture of the accused  
19 processes than that apparently exculpatory process description provided in

20           14. The evidence demonstrating the use of "common mold parts" can be  
21 summarized as follows:

22           15. In the “storyboarded” photograph series  
23

24                       However, those two photographs are two pictures of the same identical  
25 mold part.

26           16. As explained further below,  
27  
28

To

1 illustrate this better, I have attached as close up enlargements of  
2 . I have further attached as close up enlargements of  
3 have red arrows pointing to random scratches and markings on  
4 the mold faces, which illustrate that are pictures of the same part.  
5 17. A close look at and the enlargements in  
6 show that the mold half shown in is the same identical mold half as  
7 the mold half shown in

8  
9  
10  
11 Since the two photographs show the same identical  
12 mold half, the mold part shown in is the "common mold part" that  
13 Lexar denies is used in its accused process.

14 18. Further, in are asserted by Lexar to show the  
15 However, those  
16 two photographs are two pictures of the same identical mold.

17 19. The text in describes a process where  
18  
19  
20  
21  
22

23 20. According to the text,  
24  
25

26 A visual comparison of the two photographs reveals that they are indisputably  
27 photographs of the same identical mold. To illustrate this better, I have attached as  
28 close up enlargements I have further attached as

1 close up enlargements of have red arrows  
2 pointing to random scratches and markings on the mold faces, which illustrate that  
3 are pictures of the same part.

4 21. The photographs reveal  
5 come in sets designed to operate in rotary platen  
6 molding machines utilizing two "common mold parts" alternately connecting to the  
7 set of first and second complementary mold parts as claimed in the '184 patent.  
8 Those include:

9  
10  
11  
12 b.

13  
14 22.  
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17

18 23. A Rotary Molder is one designed for use with multiple injections into a  
19 series of molds held on a rotating platen not unlike a vertical version of a dining  
20 table's "Lazy Susan". A Rotary Molder such as that shown in uses one  
21 or two "common mold parts" to manufacture two component (dual-layer) products  
22 such as the accused Lexar products. In operation, the two mold halves mounted on  
23 the rotary platen connect with their facing complementary counterparts for one  
24 injection cycle, then the mold opens, and the rotary platen rotates 180 degrees, so  
25 that the parts align with the opposite complementary counterparts for the second  
26 injection cycle.

27 24. At the conclusion of two injection cycles, the parts contained in the  
28 cavities formed by mating "common mold parts" with the second complementary

1 mold part are completed, and ejected from the mold. The use of a Rotary Molder  
2 with one or two "common mold parts" is fully described and illustrated in the '184  
3 patent at Fig. 3A-3D, drawings which illustrate the same type of four mold halves,  
4 two on a fixed platen and two on a rotary platen, depicted in

5 25. Lexar discovery responses included a photograph of molds for the  
6 Accused Products.

7  
8  
9 26. When designing a mold to fit a rotary molder, it is necessary for mold  
10 assemblies that are too large to fully fit within the circumference of the rotary platen  
11 to have two adjacent corners chamfered, that is, to have the outside corners of the  
12 mold cut off, to prevent interference with the tie bars (structural members of the  
13 machine) during rotation of the mold.

14 27.

15 Note the chamfered corners shown in the photograph. These  
16 chamfers are not required for molds that do not use a rotary platen molding machine.

17  
18  
19  
20  
21  
22 28. To better explain the issue of chamfered corners on rotary molds, I am  
23 attaching as exhibit 11, a sketch of a rotary platen with two mold halves mounted on  
24 the rotary platen. As you can see on exhibit 11, the chamfered outside corners of the  
25 two molds keep the molds from extending outside area of the rotary platen, allowing  
26 clearance from the structural members (tie bars) that are on the four corners of the  
27 machine just outside the rotary platen.

1  
2 I declare under penalty of perjury under the laws of the United States of  
3 America that the foregoing paragraphs are true and correct to the best of my own  
4 personal knowledge.

5  
6 DATED this Friday, August 29, 2008.

7  
8 /s/ Stephen Petrie, Ph.D.

9  
10 

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Stephen Petrie, Ph.D., Declarant



1  
2 I declare under penalty of perjury under the laws of the United States of  
3 America that the foregoing paragraphs are true and correct to the best of my own  
4 personal knowledge.

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6 DATED this Friday, August 29, 2008.

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8 */s/ Stephen Petrie, Ph.D.*

9  
10 Stephen Petrie, Ph.D., Declarant